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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1997

Addendum

CZECH REPUBLIC*

[14 February 2000]

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* The initial report submitted by the Government of the Czech Republic is contained in document CAT/C/21/Add.2; for its consideration by the Committee, see documents CAT/C/SR.197, 198 and Add.2 and Official Records of the General Assembly, Fiftieth session, Supplement No. 44 (A/50/44), paras. 86-94.

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I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS IN THE SPHERE OF APPLICATION OF THE CONVENTION

General information

1. The second periodic report of the Czech Republic submitted in accordance with the provisions of article 19, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a follow-up to the initial report of the Czech Republic submitted to the Committee against Torture (hereinafter referred to as the "Committee") on 18 April 1994 (CAT/C/21/Add.2). The following has been taken into consideration in drafting the report:

(a) General guidelines on the form and content of reports on the fulfilment of commitments ensuing from the Convention submitted by its signatories (CAT/C/14);

(b) The consideration by the Committee of (see CAT/C/SR.197) and its conclusions and recommendations (A/50/44, paras. 86-94) on the initial report of the Czech Republic (CAT/C/21/Add.2);

(c) Relevant facts and new measures adopted by the Czech Republic to fulfil commitments ensuing from the Convention in the period under review.

2. The second periodic report of the Czech Republic is submitted for the period from 1 January 1994 to 31 December 1997 (hereinafter referred to as the "period under review"). Relevant facts for the period from 1 January 1998 to 31 December 1999 will be contained in the third periodic report, which the Czech Republic will submit at the end of 2001 in accordance with the provisions of article 19 of the Convention. However, this report mentions occasionally some facts which occurred before and after the period under review.

3. The period under review is characterized by further strengthening of legal guarantees and general respect for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Czech Republic, which ranks the above practices among the gravest forms of violation of human rights and fundamental freedoms, has adopted measures at the national as well as at the international levels with the aim of eliminating some persisting shortcomings in the consistent implementation of international legal obligations and national standards, thus contributing to the further enhancement of the existing satisfactory situation in this area.

4. The Czech Republic came into being on 1 January 1993 as one of the two successor States to the Czech and Slovak Federal Republic. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (hereinafter referred to as the "Convention"), one of the basic United Nations documents, was signed by the Czechoslovak Socialist Republic (hereinafter referred to as "the CSSR") in New York on 8 September 1986. The Convention entered into force for the CSSR on 6 August 1988 (and was made public by Notice of the Ministry of Foreign Affairs No. 143/1988 Coll.). By its note of 22 February 1993, addressed to the United Nations Secretary-General as the depository of the Convention, the Czech Republic acceded to the commitments ensuing from the Convention for the former Czech and Slovak Federal Republic retroactively as of 1 January 1993.

The Czech Republic took the following steps in the period from 1994 to 1996: on 19 November 1995, it withdrew its reservation to article 59 of the Convention, made by the CSSR at the time of signing the Convention; on 3 September 1996, the Czech Republic withdrew its reservation to article 20 of the Convention and made a declaration concerning articles 21 and 22 of the Convention. The reservation to article 30, paragraph 1 of the Convention, made by the CSSR at the time of signing the Convention, was withdrawn by the Czech and Slovak Federal Republic on 26 April 1991. As to the legal status of the Convention in the legislation of the Czech Republic, the Government of the Czech Republic refers to the relevant part of the introductory report of the Czech Republic (CAT/C/21/Add.2).

5. In the period under review, the Czech Republic became signatory to the following relevant international instruments:

The European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and its Protocol No. 1 (ETS No. 151) and Protocol No. 2 (ETS No. 152) (the Protocols have not yet entered into force);

The European Convention on Persons Participating in Proceedings before the European Commission and the Court for Human Rights (ETS No. 67);

Supplementary Protocol to the European Convention on Extradition (ETS No. 86);

The Second Supplementary Protocol to the European Convention on Extradition (ETS No. 98);

Supplementary Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 99);

Protocol No. 11 to the Convention on the Protection of Human Rights and Fundamental Freedoms (ETS No. 155).

6. In the period from 16 to 26 February 1997, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment made its first regular visit to the Czech Republic. The report of the European Committee against Torture (hereinafter referred to as the "CPT") on its visit and the reply of the Government of the Czech Republic to this report were published on 15 April 1999. The CPT report is enclosed with this report.

7. In accordance with the provisions of article 19, paragraph 1 of the Convention, the Czech Republic was to submit the second periodic report before 31 December 1997. In the light of general shortcomings in the drafting of reports on the fulfilment of commitments under the various international human rights instruments, the new Government set up the Human Rights Council of the Government of the Czech Republic as an advisory and coordinating body of the Government for monitoring the national implementation of international commitments of the Czech Republic in the sphere of human rights and fundamental freedoms. The Government of the Czech Republic has authorized the Government Commissioner for Human Rights, who is the chairman of the Council, to prepare reports on the fulfilment of commitments under the international human rights conventions.

II. INFORMATION RELATING TO INDIVIDUAL ARTICLES OF THE CONVENTION

Articles 1 and 2

8. The Czech Republic states no new facts relating to these articles.

Article 3

9. In the period under review, two amendments to the Penal Code relating to the expulsion of foreign nationals entered into force. With effect from 1 January 1994, an amendment to the provisions of article 57 of the Penal Code came into force which prohibits the expulsion of a person who has been granted refugee status (amendment No. 290/1993 Coll.). The new provision thus protects from expulsion those persons to whom the Czech Republic has granted refugee status in accordance with the 1951 Geneva Convention relating to the Status of Refugees and the Protocol thereto, and who have committed criminal acts not only in relation to their country of origin but also in relation to third countries.

10. Another important amendment to the same provision of article 57 of the Penal Code was adopted by the Parliament in Act No. 253/1997 Coll. on 24 September 1997. Pursuant to the new wording of article 57, subsection 3, paragraph (d), a court may not order the expulsion of a person if the offender is exposed to the danger of being persecuted for his race, ethnicity, belonging to a certain social group, political or religious opinions, or if the expulsion would expose the offender to torture or inhuman or degrading treatment or punishment. The legal provision quoted above thus fulfils article 3, paragraph 1 of the Convention. This amendment to the Penal Code came into effect on 1 January 1998.

11. As stated in the introductory report, the Czech Republic, which is a party to the 1951 Geneva Convention relating to the Status of Refugees, applies the principle of non-refoulement, which precludes the returning of a refugee to the territory of a country where his life or freedom may be endangered because of his race, religion, ethnicity, social status or political belief. The Czech Republic respected this prohibition also in the period 1994-1997 and did not return refugees, or persons applying for refugee status, to such countries. Moreover, in keeping with the requirements of article 3, refugees from countries in which an armed conflict is under way, e.g. from Bosnia, were not returned in practice. The authority responsible for proceedings on the granting of refugee status and for the integration of foreigners is the Department for Refugees and Integration of Foreigners of the Ministry of the Interior. This department also actively gathers information on the countries of origin of applicants for refugee status and examines whether human rights are violated massively in those countries.

Article 4

12. As stated in the initial report, the crime of "torture and other inhuman and cruel treatment" is contained in article 259a of the Penal Code, which came into effect on 1 January 1994 (amendment to Penal Code No. 290/1993 Coll.). There was no amendment to this provision in the period under review.

13. The definition of this crime in the Penal Code is broader than the definition of these acts in article 4. As stated in the initial report, it applies to all situations when torture or other inhuman and cruel treatment inflicts physical or mental suffering in connection with the discharge of the powers of a public authority (governmental authority, including a court or local government). The offender shall be punished by imprisonment for a period of between six months and three years. The offender need not be a public official, and torture or other cruel treatment need not be inflicted by or at his instigation or with his consent or acquiescence as stipulated in article 1. However, if the offender was a public official or if he committed the act with at least two more persons, or if he committed such acts for a longer period, he shall be sentenced to imprisonment for a period of between one and five years. An offender who inflicted serious physical harm shall be sentenced to a term of from 5 to 10 years, and one who caused death by his act shall be sentenced to from 8 to 15 years in prison.

Article 5

14. As stated in the initial report, this article of the Convention was implemented by an amendment to the Penal Code, namely to the provisions of its article 17, subsection 3, article 18, article 20, subsection 1 and article 20a, subsection 1. This legal regulation did not change in the period under review.

Article 6

15. Rules regulating the institution of criminal proceedings, detention of persons accused of a crime in accordance with article 4 of the Convention, or the decision on taking an accused person into detention were specified in the initial report. Those provisions did not change. According to the information obtained from the Attorney-General and regional State attorneys, there was no case of a person suspected of committing the crime of torture or other inhuman and cruel treatment being arrested pursuant to article 259a of the Penal Code in the period under review. There was no case either of a person prosecuted for the above crime being taken into detention.

Article 7

16. Provisions regulating the initiation and course of proceedings relating to crimes under article 4 of the Convention were described in the initial report. These are especially the duty of the State attorney to prosecute all crimes that he has learnt of, unless the law or an international treaty binding on the Czech Republic stipulates otherwise. This legal regulation did not change in the period under review.

17. The numbers of cases investigated of suspected torture or other inhuman and cruel treatment, or violation of the rights and protected interests of soldiers under articles 259a, 279a, 279b of the Penal Code are the following:

	1994	1995	1996	1997
Article 259a	0	0	0	0
Article 279a	104	284	80	65
Article 279b	92	107	138	89

It follows from the above table and from the information provided by the Attorney-General that no case was found in the period under review in which anyone would be prosecuted for, accused of or convicted for a crime under the provisions of article 259a of the Penal Code (torture and other inhuman and cruel treatment).

Article 8

18. As stated in the initial report, nothing in the legislation of the Czech Republic prevents the fulfilment of its commitments under the Convention. As the Convention is directly binding, it is a sufficient legal instrument for the extradition of a person suspected of committing a crime under article 4 of the Convention, including to a country with which the Czech Republic has not concluded any extradition treaty.

19. At the multilateral level, the Czech Republic is a party to the European Convention on Extradition, of 13 December 1957 (Notice of the Federal Ministry of Foreign Affairs No. 549/1992 Coll.). It is also bound by a number of bilateral treaties on legal assistance in the area of criminal law. If the State to which legal assistance is to be provided has ratified the European Convention on Extradition, the earlier bilateral treaty (though valid) is not applied. By the end of 1997, the Czech Republic had concluded extradition treaties with 15 States, and treaties on legal assistance with a total of 44 States. Moreover, the Czech Republic does not make extradition contingent on the negotiation of an international treaty but it is willing to extradite persons even on the basis of reciprocity.

20. In the period under review, the Czech Republic acceded to the Second Supplementary Protocol to the European Convention on Extradition (Notice of the Ministry of Foreign Affairs No. 30/1997 Coll.). The Second Supplementary Protocol to the European Convention on Extradition was adopted in Strasbourg on 17 March 1978. It was also signed on behalf of the Czech Republic in Strasbourg on 18 December 1995. The ratification instrument of the Czech Republic was deposited with the Secretary-General of the Council of Europe, the depository of the European Convention on Extradition, on 19 November 1996. The Second Supplementary Protocol entered into force on the basis of its article 6, paragraph 2, on 5 June 1983. In accordance with paragraph 3 of the same article, it entered into force for the Czech Republic on 17 February 1997.

21. In accordance with article 1 of the Supplementary Protocol to the European Convention on Extradition, crimes specified in article 1 of the European Convention are not viewed as political crimes in the Czech Republic. Therefore nothing prevents their criminal prosecution in accordance with the Penal Code and the Rules of Criminal Procedure (as in the past). These crimes are for example:

(i) Crimes against humanity specified in the Geneva Conventions of 1949;

(ii) Crimes specified in the 1949 Geneva Convention on the legal status of refugees, namely in its article 50 on the improvement of the lot of injured and ill members of the armed forces in the field, in article 51 on the improvement of the lot of injured, ill and shipwrecked members of the armed forces at sea, in article 130 on the treatment of prisoners of war and in article 147 on the protection of persons in war;

(iii) Any similar violations of war laws in force in the period of effect of the Supplementary Protocol and war conventions existing at that time, which are no longer stipulated in the above provisions of the Geneva Convention.

Article 9

22. In the period under review, the Attorney-General did not provide legal assistance to any State in connection with criminal proceedings brought in that State under article 4 of the Convention. The Ministry of Justice does not keep any central records of rogatory letters exchanged with other countries (moreover, the so-called direct contact of bodies of justice is used increasingly) and this is why information on the number of rogatory letters relating to crimes falling under article 259a of the Czech Penal Code cannot be provided. The Convention is not used at all in the sphere of legal assistance. Rogatory letters, if any, are sent and dealt with in respect to the "general" multilateral European Convention on Legal Assistance, or on Extradition.

Article 10

23. As education towards respect for the prohibition of torture under article 1, which is binding on the Czech Republic pursuant to article 10, cannot be separated from education towards respect for the prohibition of other acts of cruel, inhuman or degrading treatment or punishment which are not classified as torture as defined in article 1 (see article 16 of the Convention), information on the commitment of the Czech Republic ensuing from article 16 of the Convention relating to article 10 of the Convention is given here.

24. The basic professional training of prison staff was provided by the Prison Service Training Institute of the Czech Republic. The focus of professional training was (and continues to be) on introductory training courses. The training of Prison Service staff was provided as part of training in pedagogy, ethics and Christian ethics. A comparison with foreign experience shows that these courses (lasting seven weeks for staff members and four weeks for civilian employees) were (and still are) too short and should be extended adequately. Moreover, the curricula of the introductory courses did not create the basis for deeper knowledge necessary for training prison staff in the sphere of human rights. About one third of Prison Service members did not meet the requirement of complete secondary education with the school leaving certificate (however, a progressive tendency has been noted: from 38 per cent in 1994, it continually decreased to 30 per cent in 1997). Further education was organized as continuation courses in the form of specialized and extension training of various orientations designed for selected positions, primarily for prison guard inspectors, chief wardens, trainers, psychologists and educators. They were given primarily socio-psychological training, courses in social pedagogy, in methodology of work with convicts in special educational processes to reduce stress, in negotiating strategies and control of aggressive states, in crisis interventions, in the treatment of juvenile prisoners, deranged persons and sexual deviants and in drug prevention. In the period under review, a system of lifelong training of Prison Service members and civilian employees was gradually established, in which education towards respect for the prohibition of torture and acts of other maltreatment had its firm place.

25. Education towards respect for the prohibition of torture and other maltreatment also applies to the police in the Czech Republic. Besides the Prison Service, the police are the authority that most frequently face situations in which torture or other maltreatment may occur. As for torture under article 1, it should be pointed out that members of the police force, including their investigators, may perform the following acts under the Penal Code and the Act on the Police of the Czech Republic: they arrest persons, they bring in persons suspected of criminal offences, as well as other persons, they detain persons suspected of criminal offences, they put persons in detention, interrogate witnesses and suspects before and after they are charged, they interrogate other persons and also provide for expulsion detention and the execution of the punishment of expulsion. Besides these, all other police activities are also necessarily connected with the risk of non-respect of the prohibition of other acts of maltreatment under article 16 of the Convention. As pointed out below police interventions with groups of people were the most controversial ones.

26. The basic training of policemen is largely provided at secondary police schools of the Ministry of the Interior. In the period under review, secondary police schools of the Ministry of the Interior provided basic 15-month professional training designed for policemen who already had complete secondary education with the school leaving certificate, as well as two-year continuation study for those policemen who did not meet the requirement of complete secondary education and were preparing for the GCE. Human rights education was not included in the curriculum as a separate subject but was integrated into specialist security and interdisciplinary subjects. Human rights education is concentrated primarily in law classes. Classes in constitutional law placed special and systematic emphasis on the knowledge and application of the Charter of Fundamental Rights and Freedoms (a part of the Czech constitutional system) in the everyday service of the policemen and in their life outside service. Policemen were made familiar with the development of the protection of fundamental human rights from the international viewpoint and with the content of the individual international treaties and conventions. Similarly, stress was laid on knowledge of and ability to apply the relevant provisions of criminal and administrative law, especially from the viewpoint of strict adherence to the principles of legality, adequacy and ethics of work in performing procedural and administrative acts. Police deontology has become a significant subject since 1993 - it deals with the legal, professional and moral duties, social situations and rules of behaviour of policemen in relation to citizens and among their own ranks and formulates binding requirements in terms of the behaviour and acts of policemen on and off duty. However, after completing secondary school, policemen have not been trained and tested in the sphere of human rights, nor in respect for the prohibition of torture and other forms of maltreatment.

27. Reference is made to paragraph 77 which specifies the position of the municipal police. Although municipal policemen may not arrest natural persons, with the exception of an offender caught red-handed, the situations in which they can commit torture or other maltreatment are relatively frequent. In accordance with the provisions of article 13 of Act No. 553/1991 Coll. on the municipal police, they may bring in a person, thus also restricting personal freedom by force. The municipal authority is responsible for the training of the municipal police. However, a municipal policeman may only perform duties and discharge powers in accordance with the Act on municipal police if he has a valid certificate of meeting the stipulated professional prerequisites issued by the Ministry of the Interior of the Czech Republic. The Ministry of the Interior also stipulates professional prerequisites and the method of their verification in a public

notice (Decree No. 88/96 of the Ministry of the Interior). The verification is effected in the form of a test before a board of examiners of the Ministry. Professional prerequisites also include the knowledge of the constitutional system of the Czech Republic, including the Charter of Fundamental Rights and Freedoms. The certificate remains valid for three years and then must be renewed in the same way. This provides for further training of the municipal police.

28. Education towards respect for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment was provided in the following way in the Army of the Czech Republic in the period under review. Such education was carried out as part of the compulsory/alternative military service by the respective commanding officers and their specialized bodies - legal service, humanitarian service, psychological service etc. In the course of their elementary training, conscripts in compulsory/alternative military service were acquainted with human rights issues as well as international humanitarian law. Usually a military policeman or the legal adviser to the commanding officer acquaints conscripts in compulsory/alternative service with the legal aspects of military criminal offences, emphasizing bullying. Future professional soldiers are acquainted with the above issues at military schools in classes of sociology, psychology, pedagogy, professional ethics of managers, basics of personnel management, and law, to the extent of several dozen lessons in the course of the whole study.

29. Education towards respect for the prohibition of torture and for the prohibition of other acts of maltreatment was provided to the medical, educational, social and other workers who come into professional contact with accused persons in detention, convicts in prisons and persons in extradition custody (Ministry of Justice), with persons arrested and held in detention by the police and persons in extradition detention (Ministry of the Interior), with mentally ill persons placed in closed wards of mental hospitals, and with children in homes for children below the age of three (Ministry of Health), with children undergoing institutional upbringing ordered by a court or undergoing imposed protective upbringing in homes for children and young persons, and with children in foster homes (Ministry of Education) and, finally, with clients of social-care homes and old-age homes (Ministry of Labour and Social Affairs).

30. Education towards respect for the prohibition of torture and other maltreatment for judges and State attorneys who are in contact with imprisoned persons or persons otherwise deprived of freedom is naturally provided in their law education. No systematic or obligatory training of this kind for judges or State attorneys was provided in the period under review. However, it must be stated that there was no case of criminal prosecution for an offence under article 259a of the Penal Code, and the disciplinary senate of the Attorney-General did not review any proposal for initiation of disciplinary proceedings with a State attorney suspected of incorrect behaviour which could be classified as a disciplinary offence under article 27 of Act No. 283/1993 Coll., on prosecution, as amended.

31. The issue of the prohibition of torture and other maltreatment was a part of weekly training courses within two long-term training programmes for the managers of old-age homes and sheltered housing organized by the Ministry of Labour and Social Affairs in cooperation with the European Institute of Social Service at Keynes College, The University of Canterbury, Kent, United Kingdom.

Article 11

32. The legal system of the Czech Republic contains principles according to which human rights may only be restricted by an Act passed by the Parliament (not by a lower legal regulation). Duties may only be imposed by law and within its limits and the State's power may only be applied in cases and within legal limits and in the way laid down by law (not by a lower legal regulation). Thus almost all forms of imprisonment and similar deprivation of freedom are governed by law in the Czech Republic, both with respect to the method of decision-making on placement in prison or under similar custody, and to the legal regulation of the conditions of imprisonment or similar custody, i.e. the rights of imprisoned persons and the duties of their captors as well as other legal conditions in the respective custodial institution. The derogation of certain human rights and freedoms or the prohibition of any interference with selected human rights ensues not only from the legislation of the Czech Republic but, primarily, from international legal obligations of the Czech Republic (e.g. the European Convention on the Protection of Human Rights and Freedoms, article 15). This was also true in the period under review. Exceptions will be discussed below.

33. If placement in prison or similar custody was basically regulated by law, the conditions of imprisonment, especially the rights of persons imprisoned or restricted in their freedom and the duties of natural persons and legal entities imprisoning them or restricting them in a similar way were not always regulated properly by law, as we will see below.

34. Individual cases of imprisonment or detention and also situations when torture or other maltreatment may occur are discussed in the following paragraphs. The issues of supervision over imprisonment and detention, of dealing with claims concerning torture or other maltreatment, and of remedy and compensation to victims of torture or other maltreatment, are discussed under articles 12, 13 and 14 below. Considering the impossibility of separating the issues e.g. with respect to the Police of the Czech Republic, information concerning articles 12, 13 and 14 also includes information requested with respect to article 16 - other maltreatment as per the type of problems which are regulated by articles 11 to 14.

Legal regulation of the execution of detention and the punishment of imprisonment: practice

35. The execution of detention is regulated by Act No. 293/1993 Coll. on detention, which entered into force on 1 January 1994, and by the subsequent Decree No. 109/1994 Coll. of the Ministry of Justice, which issued the rules of detention with effect from 3 June 1994.

36. The execution of the punishment of imprisonment is regulated by Act No. 59/1965 Coll. on the execution of the punishment of imprisonment, which has been amended many times; in the period under review, it was amended by Act No. 294/1993 Coll., which entered into force on 1 January 1994 (along with the new law on the execution of detention) and by Act No. 152/1995 Coll., which was only a minor amendment. Similarly as in the case of the

amendment concerning detention, the more extensive amendment No. 294/1993 Coll. was followed by Decree No. 110/1994 Coll. of the Ministry of Justice, which issued rules regulating the execution of the punishment of imprisonment.

37. In accordance with the provisions of article 12, subsection 1 of Act No. 59/1965 Coll. on the execution of the punishment of imprisonment, as amended, a convicted person is allowed to receive and dispatch written communications (hereinafter referred to as "correspondence") at his own cost without any restrictions. The correspondence of a convicted person with an international organization competent to deal with submissions relating to the protection of human rights under article 10 of the Constitution of the Czech Republic is subject to no inspection.

38. In accordance with the provision of article 13, subsection 1 of Act No. 293/1993 Coll. on the execution of detention, an accused person may receive and dispatch written communications (hereinafter referred to as "correspondence") at his own cost without any restrictions. Any inspection of the correspondence between the accused and the defence counsel and State authorities of the Czech Republic is inadmissible.

39. The handling of the correspondence of accused as well as convicted persons has been governed by internal regulations of the Prison Service. The withholding of the correspondence of accused persons was made possible by law on the execution of detention which stipulated that correspondence is subject to inspection, which includes familiarization with the content of written communications. If the reason for detention is concern that the accused person will frustrate the clarification of facts relevant to criminal prosecution, the correspondence is inspected by the authority which conducts the proceedings. In other cases it is the Prison Service which is entitled to carry out the inspection. Prison Service staff have the duty to withhold correspondence and to submit it to the authorities concerned with the criminal proceedings if its content raises the suspicion of criminal activity or if the purpose of detention could be frustrated by delivering the correspondence. Withheld correspondence shall be kept in the detainee's dossier and the unobjectionable part of its content shall be communicated to the addressee.

40. The following was amended in the rules applying to the execution of detention (see para. 34). An accused person held in detention has the right to protection of his person against unwarranted violence, any forms of degradation of human dignity, insults or threats. Prison Service staff shall report each such identified case to the respective authorities and take immediate steps to prevent such behaviour. As for the right of a convicted person to the protection of his person against unwarranted violence, this is governed by the provisions of article 1, subsection 2 of Act No. 59/1965 Coll. on the execution of the punishment of imprisonment, as amended.

41. The above amendment of the law on the execution of the punishment of imprisonment rescinded the provisions on civic inspection of the execution of the punishment of imprisonment, under which this inspection was made by bodies of the Chamber of Deputies (composed of both deputies and non-deputies) having the right of entry and the possibility of talking to prisoners without the presence of third persons. Commissions of local authorities also had the right to participate in the operations of prisons and to inspect, to a considerable extent, the conditions of

the execution of the punishment of imprisonment; however, all of this was rescinded as early as 1990. See information under article 12 of the Convention for internal and the completely insufficient external inspections of the prison system.

42. In accordance with the law on the execution of detention, an accused person had the right to receive up to four visitors in prison, for 30 minutes once in three weeks. The prison director could permit more frequent or longer visits in justified cases. The prior consent in writing of the court, and of the prosecutor in the preparatory proceedings, was necessary for accused persons held in detention to receive visitors, for fear they would frustrate the clarification of facts relevant to the criminal prosecution (the so-called collusive detention). A representative of the authority involved in the criminal proceedings could also be present together with the visitors whose reception required prior consent in writing.

43. As a rule, the decision on taking into detention is only formal. An accused person in collusive detention depends on the decision of the authorities concerned with the criminal proceedings with respect to visitors and correspondence. The accused person is left without any enforceable right in this respect, and he has no possibility of appeal, with the exception of the Constitutional Court.

44. According to information from the Ministry of Justice, around 7,000 accused persons were taken into detention each year in the period under review, while the duration of detention was approximately 140 days. According to the views of specialists, being in detention causes stress in many accused persons; it often leads to disintegration of their families or a deterioration in their social situation because the accused person may not work in prison and thus cannot contribute to the family budget. Moreover, the family is exposed to pressure from their surroundings, because the general public confuses detention with proven guilt and does not understand the principle of the presumption of innocence. Many defence counsels appointed by the State pay only meagre and more or less formal attention to the financially unattractive cases: in 1994, the Czech Chamber of Attorneys registered 30 complaints concerning ex officio attorneys, in 1995 there were 47 complaints, in 1996 a total of 36 complaints and the same number of complaints in 1997. About one sixth of them were found by the Chamber to be justified.

45. The accommodation area of 3.5 sq. metres per prisoner held in detention or serving a prison sentence laid down by law, which may be reduced under exceptional circumstances and for the necessary period only, has been decreasing in all Czech prisons almost incessantly ever since 1994. The accommodation area cannot be extended using funds allocated to the Prison Service for investments, considering the steadily increasing numbers of prisoners. By 31 December 1997, the total number of imprisoned persons was 21,560 and the standard accommodation capacity represented 18,907 places. This had numerous adverse consequences; not only was it a breach of confinement conditions regulated by law and international documents, or recommended conditions for detention and for serving a prison sentence, it was also more difficult to carry out resocialization activities, the internal level of security was lower, and tension was higher in detention centres and prisons. It was necessary to use "real" prisons as detention centres, cells and bedrooms were extended to spaces which should have served other purposes, there were problems with sanitary arrangements, etc. This meant in practice that people in detention and in prisons stayed in overcrowded cells and bedrooms all day long, for there is a lack of labour opportunities in prisons and lack of opportunities for spending leisure in

a meaningful way. The investment plan for building a total of 23,518 accommodation places by the end of 2003 represents an increase of 4,611 in comparison with the situation as at 31 December 1997. This plan corresponds to the recommendations of CPT which called at selected prisons during its visit from 16 to 26 February 1997. However, it was pointed out by both specialists and Prison Service staff that the sustainable way to decrease numbers of accused and convicted persons both in detention and in prison serving sentences consisted in a fundamental change in the punitive policy, in the so-called alternative punishment, i.e. conditional termination of criminal prosecution, what is referred to as settlement and mediation, and other procedures which were made possible by the amendments to the Rules of Criminal Procedure and the Penal Code adopted in the 1990s, the latest in 1997 which came into force on 1 January 1998.

46. The following table shows the numbers of (accused and convicted) persons in custody in the Czech Republic per 100,000 inhabitants.

	1994	1995	1996	1997
Number of persons in custody per 100,000 inhabitants	187	195	208	215

47. So-called alternative punishment has been used, according to the Attorney-General, as follows: State attorneys conditionally terminated criminal proceedings against 2,509 persons in 1994, 3,400 persons in 1995, 3,891 persons in 1996 and 4,537 persons in 1997. Although the share of the total number of prosecuted persons is not especially significant (2.9 per cent in 1994, 3.1 per cent in 1995, 3.6 per cent in 1996 and 4.2 per cent in 1997), it is not possible to overlook a clearly rising trend in the number of persons criminal proceedings against whom have been terminated conditionally. As for settlement, this is a completely new institution. The low number of proposals for settlement in the preparatory proceedings (64 proposals in 1996 and 51 proposals in 1997) was also due to the insufficient legal regulation, which did not make it possible for the State attorneys to settle the whole matter by settlement in the preparatory proceedings. Shortcomings of the legislation in force were also felt in relation to community work because the institution of community work was introduced by Law No. 152/1995 Coll. quite hastily, without any regulation of related financial, labour and social issues.

48. The following table shows the number of unconditional prison sentences in relation to the total number of convicted persons:

	1994	1995	1996	1997
Total number of convicted persons	51 931	54 957	57 974	59 777
Of which unconditional prison sentences	11 128	12 552	13 377	13 934

49. The Prison Service paid special attention to juvenile delinquents kept in detention (youngsters between the ages of 15 and 18). If the capacity of prisons is exceeded, the law and the detention rules lay down that the capacity of 3.5 sq. metres per juvenile accused person or

pregnant accused woman may not be exceeded. The detention of a juvenile person is an exceptional measure. By 31 December 1997 there were 350 juvenile accused persons held in detention; of these, 11 were girls, i.e. 3.1 per cent of the total.

50. In 1994, the systemization commission of the General Directorate of Prison Service allocated to all detention jails the positions of wardens and specialists for the treatment of juvenile delinquents in detention. The training, educational and hobby activities with accused juvenile delinquents respect the specific features of their development and try to minimize the consequences of restricting their freedom. Thanks to intensive work with juvenile delinquents, certain excesses in their behaviour have been suppressed successfully, such as bullying, self-inflicted damage and suicide attempts.

51. Due to insufficient personnel, space and material provisions, it was not possible to implement in all prisons and to the necessary extent effective resocialization programme activities, which should lead to fulfilling the purpose of imprisonment. The actual work with prisoners was carried out either with selected individuals or with special groups of prisoners (sexual deviants, psychopaths etc.). In such cases, work with prisoners was at a high professional level, it showed results and the prisoners evaluated it positively.

52. Social curators (youth curators in the case of juvenile delinquents) also have access to detention centres and prisons and the possibility to work with accused and convicted persons. The contribution of continuous social work with criminal offenders lies especially in the attenuation of what is called "the first-day crisis" (i.e. after being released) and in the elimination of problems arising in connection with imprisonment. Keeping the prisoner in contact with his family ranks among the most important tasks. The insufficient number of social curators, of whom there are around 135 for the whole Czech Republic over a long period, poses a problem. Curators are allocated according to the permanent residence of the client, while the client may be placed in a prison located far from his permanent residence. It follows from this that work with all imprisoned clients is completely out of the question. Government Decree No. 209 of 1997 ordered an increase in the number of social curators, but no marked improvement has been noted.

53. Disciplinary punishment of prisoners, which means additional restriction of freedom - solitary confinement and placement in a closed ward - was not (in the period under review) decided by a judge but by a Prison Service member; thus the rights of the prisoner were not regulated in a similar way as in the case of criminal proceedings or proceedings concerning smaller offences.[1]

54. According to CPT, health care for accused and convicted persons in detention and in prisons was "at an adequate level and it was especially comparable with the level of health care provided to the whole society" (CPT Report - Strasbourg 15 July 1997). However, it can be assumed that, in practice, the attitude of health-care workers to prisoners was based on mutual mistrust. Even an advanced stage of pregnancy or a serious disease is not considered to form a legal ground for release from detention or from prison for health reasons. Outside the surgery hours of the prison doctor, medical care was provided by the civilian emergency service. A non-medical staff member decided whether to call the emergency service for a prisoner. An incorrect assessment of the prisoner's state of health could then have tragic consequences.

55. Even though foreign prisoners are entitled to the same health care as Czech prisoners, they are not included in the Law on health insurance: the Law only guarantees insurance to persons with permanent residency in the Czech Republic. This situation jeopardizes the level of health care provided, or burdens the budget of some prisons inappropriately.

56. There have been various problems in connection with health care: prisons are not prepared for receiving handicapped prisoners so that an accused paraplegic, under normal conditions capable of independent life in a wheelchair, is placed in a bed in the prison hospital. Hospital patients cannot take walks, not even for the one hour per day laid down by law, as there is not the necessary space for it in Prague - Pankrác.

57. A critical view of health care in prisons was contained in the annual report for 1995 on the state of human rights by the Czech Helsinki Committee, a civic association formed in 1988 which is a member of the International Helsinki Federation for Human Rights. The report states:

> Prisoners - e.g. in Ostrov nad Ohrí where there are old and ill people - complain of not too timely medical assistance in the case of acute health problems. Frequent self-inflicted damage is mostly considered by the staff to be wilful acts whereby the prisoners intentionally complicate the work of the wardens, although it is frequently a desperate attempt to escape from an unbearable situation or the manifestation of a psychosis. The Czech Helsinki Committee noted even the prohibition to lie or sit on the bed (in the case of lighter illnesses). Prisoners with specific complaints, such as back pain, complain of unsuitable beds and the necessity of sitting on metal stools without backrests.
>
> As far as timely medical assistance in the case of acute health problems is concerned, it is necessary to take into account the fact that if imprisoned persons suffer injury or acute health problems after working hours, on holidays and especially at night, the timeliness of medical examination and treatment depends on how soon the emergency health service arrives.

58. The Czech Helsinki Committee stated in its annual report for 1997:

> It should be observed that the level of health care provided to prisoners generally corresponds to the level usually found in our society. However, what health workers cannot resolve by themselves are the side effects of imprisonment coupled with stress in overcrowded prisons, with long periods of detention, confinement conditions where there are bedrooms for more than 10 prisoners even in prisons for convicts with long prison sentences (e.g. Mírov) and there is practically no privacy. The occurrence of many diseases is then connected with the bad mental state of the prisoners, and the doctors - employees in the prison system for many years - are not able or willing to identify them. They prefer to simply accuse the prisoners of simulating, stating that their difficulties are "only" subjective without a corresponding medical finding. Then the individual prisoners and their relatives speak of deteriorated state of health in prison as compared with their condition outside prison, in the case of people suffering from epilepsy, heart diseases, asthma, skin diseases. ... Naturally, there are also typical prison diseases with larger numbers of prisoners from the same prison suffering from them (salmonella, skin rashes).

59. The costs of medical care during hunger strikes and as a result of self-inflicted damage are billed as one of the cost items of imprisonment. The Prison Service recognizes the right of prisoners to go on hunger strike and its management generally believes that prisoners cannot be forced to terminate or interrupt it. On the other hand, the condition of the prisoner concerned is monitored by a psychiatrist, besides the monitoring of his state of health, and if the psychiatrist notes that the prisoner is no longer able to decide about himself, life-saving actions are initiated.

60. Spreading bullying is a constant problem not only in prisons but also in the army and in schools. This was already the case in the period under review. The report of the Czech Helsinki Committee for 1996 observed:

> Bullying remains a grave problem. When wardens or trainers discover cases of bullying, they can impose a disciplinary punishment on the perpetrator, or reprimand him or transfer him to another ward. The person exposed to bullying may turn to the Claims and Prevention Section, which initiates proper investigation. If bullying is ascertained, a disciplinary punishment is proposed. The perpetrator of violence can be punished by the director in more serious cases. He can be sent to solitary confinement for up to 20 days. One of the ways of preventing bullying is to identify prisoners at risk of violence from the others: physically weak prisoners or those in prison for crimes against children or women. The wardens check at the same time whether prisoners have no marks of violence on their bodies. A number of prisoners blame bruises on slipping on the stairs etc. A recidivist may be punished by up to three years of prison for blackmail and bodily harm.
>
> To prevent bullying, the Prison Service uses internal measures outlined especially in the General Director's Order No. 32/1994. Personnel and organizational measures have been adopted to eliminate bullying among juvenile delinquents. The staffing of wards for young delinquents has been reinforced so that a trainer and a specialist - an educator, a psychologist and a social worker - can work with them during the daytime.

61. The Czech Helsinki Committee also noted in its annual report for 1995:

> Besides, there are many complaints the truth of which can be verified only with difficulty in concrete cases; nevertheless, it can be deduced from their frequency that such situations do happen. These are complaints of the behaviour of wardens, of violence from prison mates who steal the possessions of others, force them to undertake various services or attack them physically. These harmed prisoners complain that they have no protection from the staff responsible for keeping order.
>
> According to information from the Prison Service, each case of theft, bullying etc. reported by prisoners or staff is investigated and possibly referred to the police for criminal prosecution. A recurrent problem is the unwillingness of persons who suffered harm to testify, sometimes even after transfer to another prison.

62. According to information from the Ministry of Justice, the Prison Service is paying increased attention to the occurrence and prevention of violence among prisoners. To provide for systematic checking of prisoners facing and posing danger, the General Director of Prison

Service issued an order in 1994 which regulates in detail the identification of prisoners potentially exposed to violence, and those who might commit violence. The way in which this order is carried out is checked and evaluated regularly. In the period under review, there were a total of 2,457 cases of violence among prisoners. The perpetrators of violence represent 2.5 per cent of all accused persons and 1.5 per cent of all convicted persons. Violent behaviour identified among prisoners is investigated with the participation of a doctor, a psychologist, a trainer, a warden and prevention workers. The case is referred to the police for criminal prosecution in justified cases. The Prison Service transfers prisoners to other prisons in justified cases.

63. However, the above statistics do not include cases of hidden violence when the prison staff were only able to guess the origin of injuries. The Prison Service did not record these cases, not even as suspicion of violence among prisoners. This violence can be viewed as a consequence of prison overcrowding.

64. The system of organization of work and remuneration of imprisoned persons contradicts the essence of the law on the serving of punishment, namely "consistently educating the convict to lead the life of a respectable citizen". What the prisoner earned was not sufficient to cover the costs of detention and imprisonment, or alimony payments etc. It should be added that there is an absolute lack of jobs for prisoners, which is also due to general unemployment. This system evokes feelings of injustice and exclusion from society in prisoners.

65. Decisions on whether to take into extradition detention a person who has committed a criminal offence for which a foreign State demands his extradition, are regulated by the Code of Criminal Procedure. The conditions of this detention are governed by the law and by the detention rules.

The legal regulation and practice of the institutions of arrest and holding

66. Arrest (without warrant) is an institution used in accordance with the law on judicial criminal procedure (Code of Criminal Procedure) before the start of the prosecution of a particular suspect until charges are raised against him and pending the possible decision of a judge on whether to take the accused person into detention. The arrest period consists of two parts - the first part runs from the moment when the freedom of the person in question was restricted until this person, against whom charges have already been laid, is transferred to the judge (i.e. his file); the second part runs from the time of transfer to the judge's file to the decision on detention or release. The first part was a maximum of 24 hours in the period under review (since 1 January 1999, it is 48 hours), the second is also a maximum of 24 hours. The legal rules applying to the period under arrest in a police cell (the rights of the arrested person and the duties of the police towards him) are governed by the Law on the Police of the Czech Republic in the same way as those applying to the placing of other persons in police cells - a person arrested (under warrant) in accordance with the Code of Criminal Procedure, a person who should be delivered to prison to serve a sentence also in accordance with the Code of Criminal Procedure, a person taken from detention or from the execution of the punishment of imprisonment by a policeman for the performance of procedural acts and, finally, a person held in accordance with the law on the Police of the Czech Republic for up to 24 hours.

67. The Law on the Police of the Czech Republic specifies which persons may be placed in a police cell and under what conditions, and what criteria a police cell must meet. If the secured (arrested) person has any reservations concerning the actions of policemen, the way they acted or behaved, he may file a complaint which will be investigated by staff of the police inspection bodies.

68. CPT notes in its report that (in 1977) the Czech Republic lacked legal regulations concerning medical care for persons under arrest, namely the right to medical examination by a doctor of that person's own choice and the right to medical examination outside the hearing and sight of policemen; this practice was also recommended for the execution of the punishment of imprisonment. CPT issued numerous recommendations for police detention, among others recommendations for improving contacts with the attorney and the outside world.

The legal regulation and practice of detention prior to expulsion

69. The legal regulation of taking detention prior to expulsion was incorporated in the Code of Criminal Procedure in 1997, with effect from 1 January 1998. The Law on the Police of the Czech Republic regulated the procedures of administrative expulsion, envisaging detention for up to 30 days. However, the legal regulation of the rights in detention of the person being expelled is still completely lacking. In 1997, the unfavourable detention conditions of foreigners before expulsion gave rise to critical remarks and recommendations on the part of CPT, which found this situation so serious that it expressed its opinion of this one thing on the spot and demanded a reply within three months, i.e. before the CPT report was submitted. Critical remarks were made with respect to the scope of the rights of people held in police cells, medical care, the detention system and also the so-called isolation rooms in detention facilities.

The legal regulation of the rights and duties of the Police of the Czech Republic

70. Reference has been made several times to Act No. 283/1991 Coll. on the Police of the Czech Republic as amended (there were three amendments in 1993), which was in force for the whole period under review. From the viewpoint of the Convention it is significant that the law regulates the duties of policemen. The fundamental legal provision on those duties states:

> When performing on-duty interventions and acts, policemen are obliged to heed the honour, respect and dignity of other persons and their own and not to allow them to suffer any unjustifiable damage in connection with this activity or any interference with their rights and freedoms exceeding the extent necessary to reach the purpose of the respective intervention or act. The policeman is obliged to inform them of their rights if the nature and circumstances of the respective intervention or act allow this; in the opposite case they shall be informed subsequently.

71. Members of the Police of the Czech Republic are justified in using the means of coercion specified in the law, under conditions also specified in the law. Those means of coercion are: defence clutches, grips, blows and kicks, tear gas, truncheon, handcuffs, police dog, forcing out by mounted police, technical means preventing the departure of a vehicle, road blocks and other means for stopping a vehicle by force, water gun, warning explosive, blow with a firearm, threat of the use of a firearm, warning shot. A policeman is authorized to use coercive measures in the interest of protecting the safety of persons, himself and property, and for the protection of public

order against a person posing a threat to them. Before using coercive measures, the policeman is obliged to ask the person against whom he intervenes to refrain from the illegal activity and to warn that coercive measures will be used (with the exception of technical measures to prevent the departure of a vehicle). He can dispense with this request and warning only in cases when his life or health, or the life or health of another person are in danger and the police intervention brooks no delay. The policeman decides which coercive measures to use in the light of the particular situation so as to achieve the aim pursued. He uses such coercive measures as are necessary to overcome the resistance of the person committing the illegal act. The policeman is also obliged to see to it that his use of coercive measures causes the person no damage which is obviously disproportional to the nature of and degree of danger posed by his illegal action.

72. In accordance with the police law, it was the duty of police officers to report each action in which coercive means were used to their superiors without any delay. This obligation was specified in the Order of the Ministry of the Interior of 1991 which laid down the way of reporting the use of coercive means or a weapon. It is the duty of the superiors of a police officer who has used coercive means to ascertain whether those means were used in accordance with the law in cases where there is doubt as to the justification or appropriateness of the use of coercive means or where their use caused death, damage to health or damage to property. The superior is obliged to write an official report on this finding.

73. According to independent observers from non-governmental organizations, inadequate police actions can be divided into the following groups:

(a) The use of legal coercive means in a situation where this is not necessary (against citizens who do not put up resistance or who oppose only verbally unsubstantiated checking of documents or unwarranted arrest). The issue of routine checks of personal documents and the right of a natural person to demand to be given the reason why his documents are requested remained unresolved in the period under review (and it has remained so until now). The Law on the Police of the Czech Republic specified situations in which the police may demand that personal documents be checked. However, no legal regulation specifies when the policeman is obliged to justify in advance the request to the person whose personal documents are being checked. It is obvious that there are situations in which the police are not obliged to give explanations to the citizen (e.g. when he is arrested in the course of committing a criminal offence). The insufficient legislation has contributed to a situation in which in some cases checks have been made without any reasons being given to the citizen in question.

(b) The use of legal but completely inappropriate coercive means in a situation where other means would be sufficient (e.g. the use of a firearm in arresting an unarmed person suspected of a trivial offence).

(c) The use of physical violence of a type which is not permissible at all as it is in contradiction of article 7, paragraph 2 of the Charter of Fundamental Rights and Freedoms (dragging by the hair, kicking and beating of a person who is lying down), or violence against arrested/held persons or threatening them with violence.

74. The criminal activity of policemen and its development are documented in the following table (data of the Ministry of the Interior):

	1992	1993	1994	1995	1996	1997
Number of identified offenders	271	288	276	270	305	245
Change, in %	+17	+6	-4	-2.2	+13	-20
Number of criminal offences	344	376	355	321	374	287
Change, in %	+19	+9	-6	-9.6	+16.5	-23
Number of criminal offences per 1,000 policemen	10.6	8.6	7.6	7.1	8.5	6.4

75. A case of alleged police violence occurred in May 1996, when the police carried out an action in the Propast club. The Czech Helsinki Committee wrote the following about this action in its annual report for 1996:

> On 4 May 1966, around 60 masked police armed with tommy guns, from the specially trained drugs police team, raided the Propast rock club in Lipanská street in Prague 3. The result of the raid was the finding of three marijuana cigarettes, an injection needle (which some visitors claimed had been placed there by the police), five people without personal ID cards, and one wanted man. No video recording of the police action was made as the batteries had allegedly gone flat in one of the VCRs, the second one recorded the interior decoration of the club and the recording made by the third one did not come out. The police had the intention of intervening against militant skinheads and of preventing them from distributing and consuming drugs.
>
> In connection with the action in Propast, the Inspection of the Ministry of Interior received 11 complaints about an offence and registered injuries of three persons, while six persons had to seek medical assistance and one of them was found unable to work. Immediately after the action the police denied having beaten some of the guests. The Police President and the Minister of the Interior had declared the action to be a regular one and in accordance with the law even before the investigation of the case was completed, and they clearly sided with the riot police unit.
>
> The Inspectorate of the Ministry of the Interior found, after investigation of the complaints, that there had been breach of the law in the raid on the Propast rock club in Prague. Firstly, the police proceeded from incorrect information as they did not know exactly who met in the club ... The intervention was not in accordance with the law in terms of its extent and performance. The case was referred to an investigator who accused the commander of the riot police unit of having abused his powers as a public official. The commander stated that, in his opinion, the raid had been justified and that they had seized 113.9 g of marijuana, ejection knives and a 45 cm long chain adjusted for beating people on the spot.

According to information provided by the Inspection of the Ministry of the Interior, on 10 June 1996 the Inspection submitted to the Investigation Office of the Czech Republic a proposal to initiate criminal prosecution of two policemen of the Police of the Czech Republic (the commander of the action and the leader of the Police Presidium team) for the criminal offence of frustrating the tasks of a public official due to negligence pursuant to the provisions of article 159, subsection 1 of the Penal Code.

On 20 June 1996, the commander of the action was charged with the criminal offence of abusing the powers of a public official pursuant to the provisions of article 58, subsection 1, paragraph (a) of the Penal Code.

On 15 October 1996, the investigator of the Investigation Office of the Czech Republic completed the investigations and sent a proposal for raising charges to the district State attorney in Prague 3, who filed charges with the District Court for Prague 3.

According to the information provided by the prosecution, sentence was passed in 1997. It ruled that the actions of the commander of the action had been evaluated as a transgression and the court transferred the whole matter to the Prague Police. However, the Czech Helsinki Committee was not satisfied with the outcome of the investigation.

76. The Code of Criminal Procedure does not allow the investigation of minors below the age of 15 suspected of having committed a criminal offence. Therefore, the legal regulation can signify a discrepancy with article 40 of the Convention on the Rights of the Child. In cases of persons under the age of 15, the Police of the Czech Republic deal with the absence of precise legislation applying the provisions of article 102 of the Penal Code, regulating duties in the interrogation of a child as a witness, and extend such duties to the interrogation of a child suspected of committing a criminal offence.[2] The specific nature of work with juvenile persons has required the specialization of police officers who deal with issues of juvenile delinquency and criminal offences committed by them. Such specialization exists in the investigation offices as well. The relevant child care authority is informed of all offences where the police detect an offender who is a minor below the age of 15. The authority, which decides on any measures to be taken against the perpetrator of the offence, is usually an administrative commission which is in the position of an independent authority in relation to the police in this respect. The measures are then adopted in accordance with the provisions of articles 43 and 45 of the family law. The problem of the non-existence of a separate justice system for children and juveniles is the subject of discussions held by the recodification commission concerning the Penal Code.

The legal regulation of the rights and duties of the municipal police

77. The municipal police force was established by Act No. 553/1991 Coll. on the municipal police. The law was amended twice in the period under review (in 1995). The legal position of this police force was changed neither by these amendments nor by those of 1993. The municipal police force is set up by the municipal assembly. As the powers of municipal police members include the right to demand an explanation, to take a person to the Police of the Czech Republic, to seize a weapon, to prohibit entry to specified places, and to open a flat or other space and seize chattels from them, the law grants them the possibility of using coercive means, although to a lesser extent than the Czech Police. Permitted coercive means include defence clutches, grips,

blows and kicks, tear gas, truncheons, handcuffs, blows with a service weapon, the threat of using a weapon and a warning shot. Thus it is obvious that the activities of the municipal police entail the risk of torture or other maltreatment. If there is any suspicion that a municipal policeman has committed a criminal offence, he is prosecuted just like other citizens. There is no special authority to investigate criminal offences committed by municipal policemen. The authors of this report have not come across any public criticism of the activities of the municipal police, with the single reservation of the Czech Helsinki Committee in 1996 regarding the questionable way of checking personal identity documents used by the municipal police.

The legal regulation of the rights and duties of the military police

78. The rights and duties of the military police are laid down in Act No. 124/1992 Coll. on the military police. This act defines the role of the military police, in the provisions of its article 1, as a service providing police protection of the Army of the Czech Republic and State property managed or used by the Ministry of Defence. The provisions of article 12 then detail the sphere of powers and responsibility applied against active servicemen and against "persons found in military buildings and in areas where military actions take place and, further, against persons committing criminal activities or offences together with soldiers or against the property of the Army of the Czech Republic and the property of the State managed or used by the Ministry of Defence". Under the provisions of article 13, a military policeman is entitled to arrest a soldier in cases specified by law and hold him for up to 24 hours from the moment of restriction of his personal freedom. In accordance with the provisions of article 15, the military policeman is entitled to restrict the free movement of the soldier, e.g. by fastening him to a firmly fixed object with the help of handcuffs for up to two hours. The military policeman may also use coercive means. The general procedure for the use of coercive means and their enumeration are contained in the provisions of article 22 of the above law.

The legal regulation of and practice with respect to the punishment of imprisonment in the context of military service and the fight against bullying

79. A soldier in compulsory/alternative military service and in military training (up to the rank of lance-corporal) could be punished by the disciplinary punishment of imprisonment for up to 14 days in the prison of the military unit concerned. Disciplinary punishment was one of the extreme measures of educational activities in the period under review and was normally used when all other measures applied by superiors were ineffective. The decision concerning punishment was made by at least the commanding officer of the battalion (disciplinary punishment of imprisonment for up to seven days), the commanding officer of the regiment or higher commanding officers (disciplinary punishment of imprisonment for up to 14 days). The process of imposing disciplinary punishment of imprisonment was regulated generally by Act No. 76/1959 Coll. on the conditions of service of soldiers, as amended, and specified in detail in the Basic Rules Applying to the Armed Forces of the Czech Republic (Zákl-1) signed by the President of the Republic.[3]

80. The same law regulates the rights and duties of a serviceman punished by disciplinary imprisonment. The Basic Rules of the Armed Forces of the Czech Republic (Zákl-1) contain the prison rules and specify the furnishings of prisons in military units.

81. The phenomenon of bullying not only associated with compulsory/alternative military service within the sphere of competence of the Ministry of Defence, it had a nationwide nature in the Army of the Czech Republic, affecting all kinds of units and services, including the elite units. The specific Czech feature lies in its being related to personal leisure time, not to military training, and in it being inflicted at the horizontal level, not vertically. In military conditions, this was a specific kind of aggressive behaviour used by a senior soldier (in terms of his earlier start of military service) against a junior one or against a whole group of junior soldiers (usually in the form of various mental or physical pressures or of demanding various specific personal services, often with an economic undertone). This behaviour was integrated into the functioning of a military unit alongside certain kinds of ritual.

82. Bullying (a breach of the rights and protected interests of soldiers) as a military offence was regulated in the provisions of articles 279a and 279b of Criminal Act No. 140/1961 Coll., as amended. A significant role in detecting it was played by the military police, who acted in the position of police authority in criminal proceedings.

83. The number of cases recorded by the military police in the period under review is shown in the chart below.

Numbers of cases of bullying recorded by the military police in the period 1994-1997

1994	1995	1996	1997
199	280	348	263

84. The total share of bullying in criminal activities in the army can be seen from the following table:

Year	Percentage
1994	3.9
1995	5.0
1996	5.0
1997	4.0

85. However, it should be pointed out that both serious and light injuries were suffered as a result of bullying in the period under review, as shown in the chart below:

Numbers of recorded serious and light injuries due to bullying

	1994	1995	1996	1997
Number of serious injuries	1	2	0	0
Number of light injuries	23	22	22	23

86. It often happens that bullying cases are referred to disciplinary proceedings because they do not meet the material aspect of a criminal offence, i.e. they pose less than minor social danger. Thus there were no court proceedings against the perpetrators of bullying in these cases.

87. In 1993, the Defence Council of the State did not recommend the setting up of the position of general inspector of armed forces of the Czech Republic. This is why the Minister of Defence decided to extend the powers of the Inspectorate of the Minister of Defence to include inspection of human rights observance within the Ministry of Defence's jurisdiction, and to set up a human rights observance inspection section in the Inspectorate of the Minister of Defence. From 1997 to 1998, it was headed by the chief inspector of human rights protection in the jurisdiction of the Ministry of Defence.[4]

88. The main responsibilities of the human rights observance inspection section of the Inspectorate of the Minister of Defence, or of the chief inspector of human rights protection within the jurisdiction of the Ministry of Defence, consisted in planned and unplanned inspections of adherence to human rights in military units and the investigation of petitions (requests, suggestions and complaints in the public or other societal interest) and complaints of a private nature in this area. Inspections also comprised checks of compliance with the prohibition of torture, inhuman or degrading treatment or punishment, with emphasis on the execution of the disciplinary punishment of imprisonment. With the exception of cases of bullying, no classical cases of torture, inhuman or degrading treatment or punishment as relevant to the Convention were identified by the human rights observance inspection section of the Inspectorate of the Minister of Defence or by the chief inspector of human rights protection in the jurisdiction of the Ministry of Defence in the period under review.

89. In connection with bullying, the Ministry of Defence tried to introduce so-called elected spokespersons in military units, specifically in companies. The inspiration for this was not only the positive experience of the post-November 1989 federal army and the armed forces of the Czech Republic (including experimental checks in the second army corps in Olomouc) but, especially, foreign experience (Sweden, the Netherlands, Germany).

The legal regulation of institutional or protective upbringing in educational facilities for institutional or protective upbringing

90. Within the sphere of competence of the Ministry of Education, Youth and Physical Education, institutional and protective upbringing seems to be the most sensitive area with respect to the implementation and enforcement of the Convention. Nevertheless, the Ministry has not recorded any cases of torture or other maltreatment in schools and educational facilities within its jurisdiction in the period under review.

91. The court decides on the introduction of protective upbringing or orders institutional upbringing in accordance with Act No. 94/1995 Coll. on the family, as amended, especially in amendment No. 91/1998 Coll., and the law on civil court proceedings (Code of Civil Procedure). Ruling No. 72/1995 Coll. of the Constitutional Court rescinded the anti-constitutional provision of the family law under which the decision on a preliminary measure (writ) consisting in placing

a child in a childcare facility, even against the will of the parents, was made by the social and legal protection authorities (district authorities). The amendment of the Civil Judicial Procedure Act (art. 76a) gives this authority to the judge.

92. According to the legal regulations in force, the courts decide about placement of a child in institutional care based on the criterion of the interest of the child. However, the Czech legal regulation also recognizes so-called custodial care. The court orders custodial care when sentencing a juvenile delinquent (aged 15-18) after finding him guilty in ordinary criminal proceedings for any criminal offence, either in addition to the punishment or separately. The court can also order custodial care for a child aged 12-15 years if it is considered under civil law proceedings that the child has committed an offence for which an exceptional punishment can be imposed under the Penal Code. The ongoing problem is that both kinds of alternative parental care (i.e. institutional and custodial care) are carried out by the same institutions.

93. Under the law, the judge may rule a preliminary measure (writ) putting the child in the care of a person (natural person or legal entity) specified in the ruling. It was common practice in the period under review, even after the promulgation of the Constitutional Court's ruling and the amendment of the law, that a child stayed in the diagnostic facility specified in the ruling for a short period and then was transferred to another institution by the authorities of the Ministry of Education, which controls foster homes.

94. The staff of the child upbringing facility in Moravský Krumlov claimed during the CPT visit in 1997 that they used the isolation room for pacifying aggressive charges, while the girls said that the room was used by the institutions for punishing non-compliance with the rules of the institution, e.g. for smoking. Temporary exclusion from the collective was regulated by Public Notice No. 64/1981 Coll. in the period under review. Any exclusion of a minor from a collective was subject to proper records, including records on continuous checks, and was checked regularly by the Czech School Inspectorate. Should any of the directors misuse the institution of temporary exclusion from the collective, this would be understood as a gross breach of work discipline.

95. According to the information provided by the Ministry of Education, Youth and Physical Training, it was recommended at a meeting of directors of diagnostic institutes on 23 April 1997 that placing minors in isolation rooms should be an absolutely exceptional measure restricted to cases when the charge posed a danger to others or vice versa, and that the teachers should use other educational methods and approaches. The Czech School Inspectorate also concentrates on the implementation of this recommendation. It can be stated, as the Ministry points out, that the institute of confinement in an isolation room is not applied in most upbringing facilities and this method must not be used as a means of punishment in any such facility.

96. While decisions on the placement of children are basically made by the court or by the judge, the legal relations in these institutions (and in children's homes of the same Ministry) were not governed by any law in the period under review. Thus the rights of children and the duties of natural persons and legal entities responsible for their upbringing were not regulated in a lawful way.

97. The necessity of legal regulation of the rights of young children in young children's homes, children in foster homes and clients in social-care facilities and in old-age homes was not felt to be too urgent because personal freedom is basically not restricted in these facilities.

98. In schools and boarding school facilities, more attention was paid to the prevention and timely reduction of any manifestations of bullying in the period under review. School facilities for educational counselling provided assistance to educational workers (pedagogical and psychological counselling centres, educational care centres for children and young people, special pedagogical centres and educational advisers in schools). The Ministry of Education provided grants to State and non-State facilities to help children in difficult situations (help lines, crisis centres, White Circle of Safety, etc.)

99. In 1995, the Ministry of Education issued an instruction to educational institutions on the execution of institutional and protective upbringing which responded to the CPT recommendations, especially in the sphere of the further training of new and existing staff of institutions for young people. Professional and methodological assistance provided to these facilities was extended and diagnostic institutes were given an exclusive right to coordinate and approve transfers of children between childcare facilities on the basis of expert opinions - in direct contradiction to the regulation of "preliminary measures" (art. 76a of the Code of Civil Procedure).

The legal regulation of the rights and duties of customs authorities

100. Under the customs law (Act No. 13/1993 Coll.), customs officers are also authorized to arrest a person (art. 32) for a limited period of up to 24 hours, to restrict the movement of aggressive persons (art. 33) by handcuffing them to a suitable object for up to two hours, and to use technical means to prevent the departure of a vehicle (art. 33a).

Article 12

101. As mentioned in the initial report, the State authorities are obliged to prosecute all criminal offences that they learn of (the principle of legality) in the performance of their official duty (the principle of officiality), unless there is a legal bar.

102. Paragraphs 16, 56, 57 and 77 contain above some statistical data for criminal offences relating to the Convention. We have no other data, such as information on how many persons were accused or convicted for torture or other maltreatment, at our disposal. However, the Ministry of Justice provided information on prosecutions of members of the Prison Service. In all, 17 members of the Prison Service were prosecuted for maltreatment of accused and convicted persons; of these, two persons were acquitted, disciplinary punishment was imposed in 12 cases and the offender was sentenced by the court in a single case. The Police of the Czech Republic keep no records of illegal actions of policemen from the viewpoint of the maltreatment of natural persons.

103. A system of internal control is applied in the Czech penitentiary system. Under the provisions of article 4, subsection 1 of Act No. 555/1992 Coll. on the Prison Service and Court Guard of the Czech Republic, the Prison Service is controlled by the Minister of Justice through

the General Director of the Prison Service. The supervision over and inspection of the execution of detention and the punishment of imprisonment is entrusted to this Minister in accordance with the relevant laws on the execution of detention and on the execution of the punishment of imprisonment. This was the case for the whole period under review. A section for the penitentiary system was set up at the Ministry of Justice for the purposes of supervising and inspecting the execution of detention and imprisonment. Individual department heads are accountable to the General Director of the Prison Service for inspection within their area of responsibility, and inspection in individual prisons and custody centres is carried out by the entire management, i.e. the prison director, and department and section heads. The General Directorate of the Prison Service has set up an inspection and prevention department which monitors the implementation of the orders issued by the General Directorate on internal control of activities and the annual plan of inspections.

104. The external inspection of the prison system was not regulated by the law on the execution of detention or the law on the execution of the punishment of imprisonment. On the contrary, the former provisions of the law on civic inspection were rescinded in the period under review without any replacement (see para. 38). According to the Rules of Procedure of the Chamber of Deputies, members of the penitentiary system subcommittee of the Chamber's Committee for Defence and Security may exercise inspection activities in prisons. However, this possibility is completely insufficient and, moreover, the deputies have no clearly defined powers and their visits to prisons are not recorded.[5] There were no legal regulations concerning internal or external inspection of police cells where detained or arrested persons are held. Civic (external) inspection is completely lacking in all the above-described facilities where people are held, including psychiatric hospitals, childcare facilities, expulsion detention facilities and military prisons. Not even non-governmental organizations, such as the Czech Helsinki Committee, have any right to visit prisoners in prisons.

Article 13

The prison system

105. According to information from the Ministry of Justice, imprisoned persons filed 5,279 complaints in the period under review; of these, 390 complaints were found to be justified, another 223 complaints were also found justified but not to have been caused by the members and staff of the Prison Service, for objective reasons (lack of accommodation capacity, inadequate material conditions) and 4,666 complaints were found unjustified. Out of the total number of 5,279 complaints, there were 1,359 complaints of maltreatment by the Prison Service, of which 66 (i.e. 4.8 per cent) were justified. Out of the total number of 66 justified complaints, there were 3 complaints of physical violence, 11 complaints of insulting statements and 52 complaints of some other incorrect behaviour. The inspection system used in prisons is described in paragraphs 92 and 93 above.

106. Complaints sent by the prisoners to the central complaints department of the Prison Service were always passed to the internal complaints section in the respective prison to be dealt with. The officer who controlled the internal complaints department enjoyed a special position of review authority who also submitted the background documents and proposals concerning decisions on the complaints to the prison director in cases of complaints involving his

colleagues. According to the views of some members of the working group against torture and inhuman or degrading treatment or punishment of the recently established Human Rights Council of the Government of the Czech Republic, this way of dealing with complaints can easily deter prisoners from insisting that their complaints be addressed.[6]

The police

107. The operation of control mechanisms is of special importance for remedying cases of inadequate police intervention. In accordance with Order No. 37/1995 of the Ministry of the Interior on specialized internal control and with Command No. 2/1977 of the Police President who issued the inspection rules of the Police of the Czech Republic, the relevant experts made inspection and methodological visits in the period under review. Additional control mechanisms included inspections of the Ministry of the Interior and of the supervisory department and the control and complaints department of the Police Presidium. The results of these inspections indicate that cases of inadequate police intervention do still occur from time to time. Information on their occurrence is given in the following table, which shows the number of citizens' complaints of inadequate police intervention and the number of complaints evaluated as justified.

Subject	1997		
	Justified + unjustified complaints	Of which justified	Share in %
Use of physical violence	111	10	9.0
Bringing in and arrest	127	18	14.2
Use of coercive means	31	6	19.4
Total	269	34	12.6

108. The supervision of criminal proceedings was carried out by the prosecution, in accordance with the law. The inspection of specifically selected areas of police work, such as the use of operational tools (and the intelligence group under the Ministry of the Interior) was also carried out by bodies of the Chamber of Deputies and by the courts. The Ministry of the Interior carried out general inspection of the operation of the Police of the Czech Republic. However, the law did not stipulate any other form of inspection outside the Ministry so that the activities of the Police of the Czech Republic were not subjected to any special institutionalized legal inspection, with the exception of the above specific areas of police work. The possibility of inspection by the Chamber of Deputies was not used for the inspection of places and situations in which there are risks of torture under article 1 or of other maltreatment under article 16. Civic associations or news reporters had effectively no opportunity for checking the work of the police. The police provided information on a selective basis. However, numerous policemen, as well as higher officials, cooperated willingly with non-governmental organizations (the Czech Helsinki Committee, the Tolerance Foundation, the Civic Solidarity Movement, the Documentation Centre for Human Rights, and others).[7]

109. Citizens have the right to file complaints about police actions. An overview of the complaints filed and of their justification can be seen in the table below (a comparison of the years 1995 to 1997). Higher justification was found in cases of refusal to accept a complaint in accordance with the Code of Criminal Procedure (32.2 per cent in 1995) or decisions in administrative matters (18.6 per cent). On the other hand, it was lower in the case of complaints about unsuitable action and behaviour (18.6 per cent), misuse of official position (15.3 per cent) and, in particular, the use of physical violence (7.2 per cent). The authorities that decide whether or not complaints are justified are not independent of the police but are the inspection and complaints authorities of the Police of the Czech Republic, or the inspection authorities of the Ministry of the Interior.

	1995		1996		1997	
Evaluation of complaints	Total	%	Total	%	Total	%
Justified	1 321	13.2	1 288	12.2	902	13.4
Unjustified	4 551	45.5	4 653	44.0	3 678	54.7
Transferred	3 925	39.2	4 340	41.0	1 989	29.5
Filed without investigation	208	2.1	302	8.8	160	2.4
Not disclosed	0	0	0	0	0	0
Total	10 005	100	10 583	100	6 729	100

110. The basic shortcoming of the whole system was the fact that the police themselves dealt with the complaints and were, in fact, the "judge" in their own case. Another shortcoming was the lack of transparency or the low publicity given to police operations. There was some news in the press on individual cases of inadequate police procedures, but the people raising the complaints usually never learned the final result even when the complaint was found to be justified, and were often not made acquainted with the measures adopted.[8]

111. The Inspectorate of the Ministry of the Interior investigates criminal activity by members of the police and, in accordance with the Code of Criminal Procedure, is in a position of so-called authority over the policy. In the period under review, the expert public was increasingly inclined towards the view that it would be desirable if an authority not reporting to the Minister of the Interior were in charge of investigating criminal offences by members of the police - preferably State attorneys, as the Minister of the Interior proposed. Only decisions concerning the breach of internal rules would remain entrusted to the Inspectorate of the Minister of the Interior. (See also para. 107.) Criminal offences committed by members of the police are investigated by investigators employed in investigation offices. The issue of external control by the public also remains open.

The educational system

112. In the area of education, the Czech School Inspectorate uses specialists in the field of ethopaedia for inspection of these institutions and facilities, in accordance with article 19, subsections 2 and 3 of Act No. 139/1995 Coll. on State administration and self-government in

the educational system, while a standard part of its activities in institutions for minors is the monitoring of how fundamental human rights and children's rights are observed, whether minors may raise complaints or file other notices with an independent institution, etc. The Ministry of Education, Youth and Physical Training deals with roughly 600 complaints every year; out of these, roughly 25 to 30 per cent are found to be justified. Complaints about the use of physical or otherwise unsuitable punishment of pupils, of bullying or degradation are recorded separately. Out of these, only one or two are usually found to be justified every year, according to the Ministry of Education. Cases of such behaviour on the part of teachers are classified as serious or particularly serious breaches of work discipline and what follows is usually reporting of a criminal offence and dismissal.

113. The Czech School Inspectorate is an independent inspection authority. This guarantees that complaints will not be dealt with by the superior of the staff member about whom the complaint was made because the inspectorate does not intervene directly in the activities of schools and educational facilities and has an independent position in respect to them. The activity of the Inspectorate, which also plays the role of State supervisor in the sphere of education, is defined by Act No. 564/1990 Coll. on State administration and self-government, as amended. According to the Czech School Inspectorate and the inspection department of the Ministry of Education, complaints about bullying, degrading behaviour or treatment or punishment in the work of schools and educational facilities did not represent any worrying proportion. The overwhelming majority of the complaints were concerned with economic aspects and labour relations (e.g. breach of work discipline). Out of the total number of complaints, around 2 per cent concerned bullying among pupils. Approximately 1.5 per cent of the complaints related to physical violence against a pupil by a teacher or head teacher.

114. A significant new aspect, included in the Code of Criminal Procedure in 1993, was improved protection of witnesses, aimed at preventing any intimidation or other influencing of witnesses by keeping their personal data and their appearance secret, and at increasing their personal safety. The 1994 ruling of the Constitutional Court (No. 214/1994 Coll.) rescinded this provision of the Penal Code. In the Constitutional Court's opinion, it is necessary to adhere to the principle of due process also in respect of the protection provided to witnesses exposed to risk, and when resorting to its lawful restriction for the sake of protecting the personal inviolability of the witness the principle should be applied that such restriction is admissible only when it is not feasible to accord protection in any other way; it is also necessary to respect the requirement of minimizing any such steps. The Parliament adopted an amendment to the Code of Criminal Procedure (No. 152/1995 Coll.), in force from 1 September 1995, in which it amended the provision concerning the position of the witness (art. 55, subsection 2) in a novel way, observing the constitutional award. Persons who have the right to inspect the dossier (art. 65, subsection 1) shall not find the personal data of the witness there.

Article 14

115. As mentioned in the initial report, Act No. 119/1990 Coll. on court rehabilitation and Act No. 58/1969 Coll. on liability for damage caused by a decision of a governmental authority or by its incorrect official procedure, which are quoted in the initial report, are applicable to remedies and compensation in the Czech Republic.

116. According to the Ministry of Justice, the compensation department did not deal with any justified request for compensation on the grounds of torture or other cruel, inhuman or degrading treatment and this is why no such compensation was provided on those grounds.

117. In 1997, the Parliament of the Czech Republic passed Act No. 209/1997 Coll. on granting financial assistance to victims of crime, which entered into force on 1 January 1998. The law allows compensation to both the victim of a criminal offence and the survivor in the case of the death of the provider of subsistence caused by a criminal offence. One-off compensation is designed to help the difficult situation of the victim or the survivor.

118. General supervision of the observation of laws was entrusted to the State Prosecution in Czechoslovakia and, until the end of 1993, in the Czech Republic as its successor State. The State Prosecution was able to exercise its powers - a protest made by the State Prosecution, intervention in civil proceedings, supervision of criminal proceedings and special rights to review and revoke rulings in criminal and civil proceedings - and deal with claims by victims of torture and other maltreatment for remedy and possibly for compensation. The new authority - the Attorney-General and the State attorneys who have replaced the State Prosecution since 1994 - does not have these powers. The State attorney is only a public prosecutor. He represents the State especially in criminal cases and is involved in civil court proceedings only in specified cases (e.g. the stripping or restriction of legal competence, the declaration of a person to be dead). The non-existence of the State Prosecution, or of its former powers, had negative effects on the whole life of the society in the period under review (see e.g. para. 101 of this report). Contrary to the former State Prosecution, the terms of reference of the State attorneys did not include the former supervision of observance of laws in institutions for the execution of detention and the punishment of imprisonment, and those for protective treatment and protective upbringing in the period 1994-1997. The necessity to reinstate some former powers of the State Prosecution was reflected in the Policy Statement of the Government which took office in summer 1998 after the general elections: the Policy Statement calls for transferring the power to investigate criminal offences of members of the police to State attorneys, and for the reinstatement of the general supervision of the State attorneys in the non-penal area (they execute this supervision in the penal area). This intention has been implemented by the Government in completing the Law on the State Prosecutor (see note 8).

119. In the course of the four years under review, the efforts to establish the position of the public defender of rights (ombudsman) were not successful, although these efforts were considerable - see paragraph 27 of the initial report. It can be expected that the office of the ombudsman would be a favourable institution especially in such sensitive individual cases as making good the damage and wrongs caused to a person by torture and maltreatment. The Government included the setting-up of this institution in its Policy Statement in 1998. The Government had to restrict the intended powers of the ombudsman and prepared a draft bill without any constitutional powers for the ombudsman although it had formerly envisaged vesting more extensive powers in the ombudsman through a constitutional law. The draft bill was passed by the Parliament on 4 November 1999 and is now being dealt with by the Senate.

120. Court protection of the rights of individuals ranks among the basic procedures in the Czech legislation. Anyone may claim his rights in a court which is independent of the executive and impartial. Cases of restriction of fundamental rights and freedoms are taken up by the Constitutional Court as well. However, there were considerable shortcomings in the enforcement of the law in the period under review, caused partially by the low efficiency of the judicial system and the slow speed with which the courts dealt with cases and decided on them. The Government is preparing reform of the judiciary.

Article 15

121. As mentioned in the initial report, no evidence acquired through iliegal coercion or under the threat of such coercion may be used in proceedings under article 89 of the Code of Criminal Procedure, except when it is used as evidence against the person who used such coercion or threatened it.

Article 16

122. Information on the implementation of articles 10, 11, 12 and 13 contained information relating to torture under article 1 as well as information on other maltreatment under article 16, either simultaneously or separately.

III. RESPONSE TO THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

123. The only recommendation which the Committee offered in its conclusions of 11 November 1994 concerned the reservation of the Czech Republic to article 20 of the Convention. In accordance with the recommendation of the Committee, the Czech Republic withdrew its reservation to article 20 of the Convention and made a declaration recognizing the Committee's competence to receive and consider communications under article 21, paragraph 1, and under article 22, paragraph 1 of the Convention. Thus the Czech Republic recognizes the competence of the Committee to receive and consider communications from a State party to the effect that another State party is not fulfilling its commitments under the Convention in accordance with article 21, paragraph 1, and the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention, in accordance with article 22, paragraph 1. The document on the withdrawal of the reservation, together with the declaration, was deposited with the United Nations Secretary-General on 3 September 1996. The communication of the Ministry of Foreign Affairs on the withdrawal of the reservation and on the declaration was published in the Collection of Laws, as No. 39/1997, on 7 March 1997.

Notes

[1] The regulation has been changed by the new Law on the serving of punishment, effective as of 1 January 2000.

[2] The protection of children in such procedures has been reinforced in 1999 by the newly introduced Law on the social and legal protection of the child.

[3] In 1999, the Czech Republic adopted a new, modern legal regulation concerning the military service.

[4] The Ministry of Defence has been the head of a department for the inspection of legal activities within the Inspectorate of the Minister of Defence, while the human rights observance inspection section reports directly to him.

[5] A new legal regulation passed in 1999 introduces a new form of supervision over both types of prisons, carried out by the State prosecutor. Moreover, the Senate of the Czech Republic is currently discussing a newly proposed law on the Public Defender of Rights (Ombudsman), who will have extensive powers in these matters.

[6] See note 5.

[7] As of 1 January 2000, the new Law on Freedom of Information comes into effect, which will fully resolve the current problems in these matters.

[8] The newly drafted Law on the State Prosecutor will mean a radical change in the current system. It proposes that the power to investigate crimes committed by the police be transferred to the State Prosecutor.